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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

LAKE FOREST KEYS, Plaintiff and Respondent, v. SABINA C. BROWN, Defendant and Appellant.	G033941 (Super. Ct. No. 02CC14314) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David T. McEachen, Judge. Dismissed.

Richard Paul Herman for Defendant and Appellant.

Fiore, Racobs & Powers, John R. MacDowell and Michael C. Fettig for Plaintiff and Respondent.

* * *

Defendant Sabina C. Brown purports to appeal from a contempt judgment, the imposition of monetary sanctions, and an award of attorney fees incurred by plaintiff Lake Forest Keys (LFK) in connection with the contempt proceeding. Brown filed her notice of appeal from an "[o]rder granting a request of $35,000 fees and costs against the

defendant and cross-complainants [*sic*]." The notice further described the order as having been "entered on . . . 3/16/2004." Brown has not provided a copy of *any* order made on March 16, 2004. Brown did, however, provide the transcript of testimony and argument presented at a hearing held on March 16, 2004, on LFK's request that she be held in contempt of court. Brown belatedly provided a copy of a formal order signed by the court on March 19, 2004, which sets forth the rulings and orders made at the March 16 hearing. We construe Brown's notice of appeal liberally to apply to the March 19, 2004 order.

Brown's appeal is nevertheless doomed. The order is nonappealable in its entirety. Accordingly, for reasons discussed below, we dismiss the appeal.

DISCUSSION

The order from which Brown purports to appeal adjudged her guilty of contempt of court for the willful and knowing violation of five separate court orders that she had the ability to obey. Brown was ordered to serve 48 hours in the Orange County women's jail and to pay $35,861.79 to LFK. The monetary award was comprised of: (1) $27,875.04 as fees and costs incurred by LFK in connection with the contempt proceeding; (2) $2,248 as a sanction for failure to appear at a mandatory settlement conference, this sum representing the reasonable fees and costs incurred by counsel for LFK; (3) $3,078.75 as a sanction for failure to appear at a court-ordered deposition; and (4) $2,660 as an additional sanction for failure to appear at a mandatory settlement conference, representing the reasonable fees and costs incurred by associate counsel for LFK in its capacity as cross-defendant.

As nearly as we can tell from the skimpy record on appeal, those portions of the March 19 order committing Brown to a 48-hour jail term, and awarding LFK $27,875.04 as attorney fees incurred in prosecuting the contempt proceeding, were made

under authority of Code of Civil Procedure section 1218, subdivision (a)[1], as a judgment of contempt. The court is authorized to imprison a person found guilty of contempt for up to five days, and to award to the party initiating the contempt proceeding its reasonable attorney fees and costs.

Monetary sanctions are authorized, even in the absence of a finding of contempt, for the failure of a party to attend a mandatory settlement conference. (Cal. Rules of Court, rules 222(b), 227(b).) And monetary sanctions for the failure of a duly noticed deponent to appear at a deposition are authorized by section 2025, subdivision (j). We discuss the judgment of contempt and the orders imposing monetary sanctions separately.

The Judgment of Contempt Is Not Appealable

The right to appeal is purely statutory. Section 904.1, subdivision (a)(1)(B), expressly prohibits taking an appeal from "a judgment of contempt that is made final and conclusive by Section 1222." Section 1222, in turn, provides, "The judgment and orders of the court or judge, made in cases of contempt, are final and conclusive." As explained in *Guardianship of Melissa W.* (2002) 96 Cal.App.4th 1293, 1299, "'A party to an action cannot, with right or reason, ask the aid and assistance of a court in hearing his [or her] demands while he [or she] stands in an attitude of contempt to legal orders and processes of the courts of this state. [Citations.]"

Review of contempt judgments "may be had by the extraordinary writs of certiorari or, where appropriate, habeas corpus [citation], and the scope of inquiry is limited to the question whether the court had jurisdiction to render the judgment or order. [Citation.]" (*Moffat v. Moffat* (1980) 27 Cal.3d 645, 656; see also *In re Chapman* (1956) 141 Cal.App.2d 387, 389-390 ["'[O]ne who has been adjudged guilty of contempt has but

[1] All further statutory references are to the Code of Civil Procedure.

two remedies — *habeas corpus* and *certiorari*. The scope of the inquiry which the court can make upon either *habeas corpus* or *certiorari* is precisely the same. . . . This inquiry, of course, cannot go beyond the question of jurisdiction and the review of the evidence is limited to the sole purpose of determining, first, whether jurisdiction existed; and, second, whether jurisdiction was exceeded'"].)

Were we to treat this appeal as a petition for extraordinary writ, relief would still be denied. Brown does not argue the court lacked either subject matter or personal jurisdiction, nor does she argue the court acted in excess of its jurisdiction, nor could she. Brown *appeared* at the contempt hearing, but made no suggestion the court lacked personal jurisdiction. Section 1218 authorizes the court to determine whether a person is guilty of contempt, and upon a finding of guilt, to order commitment to jail for up to five days and to award attorney fees and costs to the party initiating the contempt. Thus, the court plainly had jurisdiction of the subject matter, and the punishment and remedy ordered by the court were within its statutory authority.

Because the court possessed both personal and subject matter jurisdiction, and did not act in excess of its jurisdiction, treating the purported appeal as a petition for writ of *certiorari* or *habeas corpus* would be futile.[2]

Accordingly, Brown's appeal from that part of the March 19 order committing her to a 48-hour jail term and awarding plaintiff its attorney fees and costs must be dismissed.

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[2] Brown's only argument on her attempted appeal is that her counsel was engaged in a criminal trial in Riverside County, and the court should have continued the matter. But this argument does not serve to defeat the court's jurisdiction nor does it demonstrate any act in excess of jurisdiction. In denying Brown's motion to continue, the court noted, "This has been continued several times — five times." LFK's counsel added: "Five times. This is the sixth hearing. The sixth hearing after the preliminary injunction was violated. The preliminary injunction makes seven." Moreover, another lawyer *did* appear to represent her. After Brown's motion for a continuance was denied, her lawyer asked questions of the witnesses and argued the matter. Brown makes no showing what else could have been offered or said on her behalf.

The Monetary Sanction Orders Are Not Appealable

Section 904.1, subdivision (b), provides: "Sanction orders or judgments of five thousand dollars ($5,000) or less against a party or an attorney for a party may be reviewed on an appeal by that party *after entry of final judgment* in the main action, or, at the discretion of the court of appeal, may be reviewed upon petition for an extraordinary writ." Sanction orders entered before final judgment may be reviewed on appeal *only* where the amount exceeds five thousand dollars. (§ 904.1, subds. (a)(11) & (a)(12).)

Each of the sanction orders Brown asks us to review are less than $5,000, even if we aggregated the two orders for failure to attend the same settlement conference. But failures to attend a mandatory settlement conference and a court-ordered deposition are separate and distinct acts. As such, the sanctions arising from those misdeeds cannot be aggregated to make an appealable order. (*Champion/L.B.S. Associates Development Co. v. E-Z Serve Petroleum Marketing, Inc.* (1993) 15 Cal.App.4th 56, 57.)

Brown contends the sanction orders are appealable as post-judgment orders. (§904.1, subd. (a)(2).) But she has not demonstrated that a final judgment was entered before the date of the sanction orders, so we cannot conclude the challenged orders were entered post-judgment. In fact, the record we *do* have suggests the contrary. We take judicial notice of the record provided in one of the related cases, *Lake Forest Keys v. Brown*, 4th Civ. No. G033852, and find an order filed on March 3, 2004, which struck Brown's pleadings and directed the clerk to enter her default. That order is not a final judgment, and there is no other statutory authority to appeal it. There is nothing in the record to demonstrate the court has adjudicated all causes of action of the complaint, or any of them. The complaint sought a preliminary and permanent injunction to require Brown to complete construction on her property, and for damages, on theories of breach of contract and nuisance. The complaint also prayed for declaratory relief. The present record shows only that LFK *may* proceed by default, not that it *has* proceeded to final

judgment. "It is the appellant's burden to demonstrate the existence of reversible error." (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 766.) Brown has failed to meet that burden. The appeal from that portion of the challenged order awarding monetary sanctions against Brown is dismissed.

DISPOSITION

The appeal is dismissed. Plaintiff Lake Forest Keys shall recover its costs on appeal.

IKOLA, J.

WE CONCUR:

SILLS, P.J.

O'LEARY, J.